

### REMARKS

Claims 1-21 are pending in the application. Claims 1-2, 6-7, 10-13, and 17-21 are amended.

Applicant thanks the Examiner for taking time to discuss the outstanding Office Action on July 18, 2006. In accordance with that discussion, and in view of the present amendment and remarks, reconsideration of the rejections set forth in the Office Action dated April 5, 2006, is respectfully requested.

#### Rejections of Claims 1-11 under 35 U.S.C. 102

Claims 1-4, 8, 10, and 11 stand rejected under 35 U.S.C. 102 as allegedly being anticipated by U.S. Patent No. 5,681,312 to Yuan. However, Yuan fails to teach each and every element of the claims. For example, independent claims 1, 10, and 11 recite an adjustor member or means for adjusting that transitions between a first state wherein the adjustor member is fixed relative to the first member and movable relative to the second member, and a second state wherein the adjustor member is fixed relative to the second member and movable relative to the first member. As discussed during the examiner interview, Yuan fails to teach or suggest such an adjustor member.

Thus, Applicant respectfully submit that claims 1, 10, and 11 are patentably distinct from Yuan. Claims 2-4 and 8 all depend from claim 1 and are patentable over the prior art for at least those reasons articulated with respect to claim 1.

Claims 1-8, 10, and 11 stand rejected under 35 U.S.C. 102 as allegedly being anticipated by U.S. Patent No. 6,663,631 to Kuntz. However, Kuntz fails to teach each and every element of the claims. For example, independent claims 1, 10, and 11 recite an adjustor member or means for adjusting that transitions between a first state wherein the adjustor member is fixed relative to the first member and movable relative to the second member, and a second state wherein the adjustor member is fixed relative to the second member and movable relative to the first member. As discussed during the examiner interview, Kuntz fails to teach or suggest such an adjustor member.

Thus, Applicant respectfully submit that claims 1, 10, and 11 are patentably distinct from Kuntz. Claims 2-8 all depend from claim 1 and are patentable over the prior art for at least those reasons articulated with respect to claim 1.

Rejection of Claims 12-17 under 35 U.S.C. 102

Claims 12-17 stand rejected under 35 U.S.C. 102 as allegedly being anticipated by U.S. Patent No. 6,663,631 to Kuntz. However, Kuntz fails to teach each and every element of the claims. For example, independent claim 12 recites a second plate member that includes a distraction screw coupler that permits the second plate member to be mounted over a distraction screw having a shank embedded into the second vertebra. Kuntz fails to teach or suggest such a feature.

Kuntz relates to an orthopedic device for correcting instability of an injured hinge joint. According to the examiner, Kuntz includes a second member 18 that corresponds to the second member recited in claim 12. However, the second member 18 in Kuntz is not a plate member, but is rather a block of material. The examiner further asserted that Kuntz shows a distraction screw 32. However, the screw 32 in Kuntz does not and cannot have a shank portion that is embedded into a vertebra. The screw 32 is too short to be embedded into a vertebra. Moreover, the Kuntz device does not have a plate member that connects to a vertebra.

Thus, Applicant respectfully submit that claim 12 is patentably distinct from Kuntz. Claims 13-17 all depend from claim 12 and are patentable over the prior art for at least those reasons articulated with respect to claim 12.

Rejections of Claims 18-21 under 35 U.S.C. 102

Claims 18, 19, and 21 stand rejected under 35 U.S.C. 102 as allegedly being anticipated by U.S. Patent No. 5,681,312 to Yuan. However, Yuan fails to teach each and every element of the claims. For example, independent claim 18 recites second plate member that includes an interface configured to removably mate with a complimentary-shaped interface of a third plate member. Yuan does not teach or suggest such a feature.

Yuan relates to a bone fixation device with a first plate member 14 and a second plate member 12. Neither the first plate member or the second plate member includes an interface configured to removably mate with a complimentary-shaped interface of a third plate member. Thus, Applicant respectfully submit that claim 18 is patentably distinct from Yuan. Claims 19 and 21 both depend from claim 18 and are patentable over the prior art for at least those reasons articulated with respect to claim 18.

Claims 18-21 stand rejected under 35 U.S.C. 102 as allegedly being anticipated by U.S. Patent No. 6,663,631 to Kuntz. However, Kuntz fails to teach each and every element of the claims. For example, independent claim 18 recites second plate member that includes an interface configured to removably mate with a complimentary-shaped interface of a third plate member. Kuntz fails to teach or suggest such a feature.

As discussed, Kuntz relates to an orthopedic device for correcting instability of an injured hinge joint. Kuntz does not teach or suggest a plate, much less a second plate that includes an interface configured to removably mate with a complimentary-shaped interface of a third plate member. Thus, Applicant respectfully submit that claim 18 is patentably distinct from Kuntz. Claims 19-21 both depend from claim 18 and are patentable over the prior art for at least those reasons articulated with respect to claim 18.

It is believed that all of the pending claims have been addressed in this paper. However, failure to address a specific rejection, issue or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

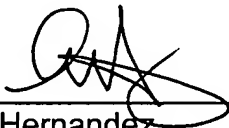
Applicant : M. Samy Abdou  
Serial No. : 10/825,916  
Filed : April 15, 2004  
Page : 10 of 10

Attorney's Docket No.: 17348-002001

Applicants respectfully submit that the pending claims are now in condition for allowance and respectfully request the same. If the Examiner has any questions regarding the foregoing, he is cordially invited to contact the undersigned so that any such matters may be promptly resolved.

Respectfully submitted,

Date: September 5, 2006

  
\_\_\_\_\_  
Fred C. Hernandez  
Reg. No. 41,832

**PTO Customer No.: 20985**  
Fish & Richardson P.C.  
12390 El Camino Real  
San Diego, California 92130  
Telephone: (858) 678-5625  
Facsimile: (858) 678-5099  
Email: fhernandez@fr.com

10628710.doc